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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ABRAHAM VALDIVIA, Defendant and Appellant.	G039545 (Super. Ct. No. 06CF2247) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed.

Phillip I. Bronson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Arlene Aquintey Sevidal, Deputy Attorneys General, for Plaintiff and Respondent.

Abraham Valdivia stands convicted of four felony drug counts. He contends there is insufficient evidence to support two of the counts, and the court erred in admitting evidence regarding a prior drug conviction he had suffered. We reject these contentions and affirm the judgment.

FACTS

One the night of July 17, 2006, Police Officer Edward Gutierrez was traveling north on Pacific Avenue in Santa Ana. At the cross street ahead of him, he saw a Honda Accord turn south onto Pacific, but the vehicle did not travel far. Immediately after the turn, it "made a real hard pull to the right and parked extremely fast." The driver, Valdivia, and the passenger, his girlfriend, then exited the vehicle and crossed the street in front of Gutierrez's police car.

Gutierrez pulled over and contacted them on the curb. He asked Valdivia for his driver's license, but he did not have one. After a DMV check revealed Valdivia's license had been suspended, Gutierrez asked him why he had been driving. Valdivia claimed he had not been driving. When Gutierrez explained he had seen him in the Honda, Valdivia insisted that a friend had just dropped him off and that he had nothing to do with the car. However, he did have a key for the Honda, and it was registered to a Joseph Valdivia, who had the same address as Valdivia.

Gutierrez searched the Honda and found two baggies of methamphetamine in plain view in a pocket on the driver's side door. And under the radio near the center console, he found another baggie of methamphetamine, as well as a small amount of heroin. He then searched Valdivia and found two cell phones and $210, comprised mostly of twenties. Valdivia did not appear to be under the influence, and no drug paraphernalia was found during the searches.

At trial, Gutierrez opined Valdivia possessed the drugs for sale, and the jury agreed with respect to the methamphetamine. However, with regard to the heroin, it

convicted Valdivia of simple possession. It also convicted him of transporting the drugs. The trial court sentenced Valdivia to four years in prison.

I

Over defense counsel's objection, the trial court told the jury that in 2005, Valdivia pled guilty to simple possession of methamphetamine. Valdivia claims this was error, but we disagree.

In discussing the prior conviction, the court stated it was relevant to show that Valdivia knew the narcotic nature of the methamphetamine that was found in the Honda. The court also indicated it might not be necessary to introduce the actual conviction to show this. It told the parties, "If you were to stipulate that [Valdivia] does know what methamphetamine looks like, then maybe the conviction wouldn't have to come in." The prosecutor opposed this idea, thinking the stipulation was too restrictive. The discussion then turned to "sanitizing" the prior, in order to limit its prejudicial effect. Parroting the court's idea, defense counsel suggested they could simply tell the jury that Valdivia knows what methamphetamine looks like, but again the prosecutor balked, and no agreement could be reached. Defense counsel then returned to her original position that the conviction should be excluded altogether.

The trial court disagreed. Toward the close of evidence, it told the jury "that in 2005 [Valdivia] pled guilty to simple possession of methamphetamine. Now, that did not involve transportation of methamphetamine or possession for sale. Simple possession of methamphetamine for personal use." The court also gave a limiting instruction with respect to this evidence. It told the jurors they could use the evidence to determine whether Valdivia "knew of the controlled substance's nature or character as a controlled substance," but they could not use it to prove Valdivia "has a bad character or is disposed to commit crime."

Valdivia contends that rather than telling the jury about his prior guilty plea, the trial court should have forced the prosecution to stipulate that he knows what

methamphetamine looks like. However, trial courts generally cannot compel prosecutors to stipulate to facts that are needed to establish a defendant's guilt. (See *People v. Waidla* (2000) 22 Cal.4th 690, 723, fn. 5; *People v. Garceau* (1993) 6 Cal.4th 140, 182; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1007.) In fact, "[t]here is a strong policy against depriving the People's case of its persuasiveness and strength by forcing the prosecutor to accept stipulations that soften the impact of the evidence in its entirety. [Citation.]" (*People v. Cajina* (2005) 127 Cal.App.4th 929, 933.) "[A] criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it." (*Old Chief v. United States* (1997) 519 U.S. 172, 186-187; see also *People v. Thornton* (2000) 85 Cal.App.4th 44 [defendant's failure to contest an element of the drug charge he was facing did not preclude the prosecution from presenting evidence as to that element]; but see *People v. Hall* (1980) 28 Cal.3d 143 [carving out limited exception to this rule in holding that a defendant should generally be allowed to stipulate to his status as a felon when he is charged with the offense of being an ex-felon in possession of a firearm].)

Like Valdivia here, the defendant in *Thornton, supra*, challenged the introduction of evidence of his prior drug activity to prove his knowledge of the narcotic nature of certain drugs that were found in his car. Because he never made his knowledge in that regard an issue in the case, he claimed it would be unfair for the jury to hear such evidence. However, the trial court allowed the evidence, and on appeal we upheld that decision as a reasonable exercise of discretion. We explained that while a "criminal trial must always be fair[,] . . . it need not be fair in the sense of a fair fight: one in which each side has an equal chance to win. We do not handicap the parties to a criminal trial. If one side or the other has overwhelming evidence, it is allowed to use as much as it chooses, subject only to exercise of the trial court's *considerable* discretion under Evidence Code section 352. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124 [exercise of discretion under Evid. Code, § 352 will not be disturbed on appeal unless shown to be

‘“arbitrary, capricious, or patently absurd”’ resulting in a ‘“manifest miscarriage of justice”’].)” (*People v. Thornton, supra,* 85 Cal.App.4th at pp. 47-48.)

As in *Thornton*, we find no abuse of the trial court’s considerable discretion in this case. Although character evidence generally cannot be used to show a defendant’s propensity for criminal conduct, it may be admitted to prove his knowledge of a material fact in the case. (See Evid. Code, § 1101, subds. (a), (b).) Valdivia’s knowledge of the narcotic nature of the methamphetamine that was found in his car was a material fact in this case. Indeed, as he admits, it was an essential element of the prosecution’s case. (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.) And the evidence of his prior methamphetamine conviction was compelling proof of this element.

The proposed stipulation — that Valdivia knows what methamphetamine looks like — was also relevant to this issue. But it was vague in terms of explaining *how* Valdivia knew this. Left to speculate on the issue, the jurors may have surmised that he acquired this knowledge by such means as perusing the internet or watching television. But that would not have been accurate. By explaining that Valdivia had been convicted of possessing methamphetamine, the court alerted the jury to the precise and intimate basis of Valdivia’s knowledge. This was a far more accurate, descriptive and persuasive way to prove the knowledge requirement than by simply telling the jury Valdivia knows what methamphetamine looks like. So, requiring the prosecutor to accept the proposed stipulation in lieu of presenting evidence of Valdivia’s prior conviction would have effectively diluted the state’s case. Under these circumstances, the trial court did not error in failing to compel the prosecutor to accept the proposed stipulation. (See *People v. Robles* (1970) 2 Cal.3d 205, 213; *People v. Washington* (1979) 95 Cal.App.3d 488, 492.)

We recognize there is always a possibility of substantial prejudice to the defendant when the jury is presented with evidence of his prior misconduct. Here, however, the court made but brief mention of Valdivia’s prior conviction, the conviction

was not remote in terms of time, and it did not involve conduct that was any more inflammatory than what Valdivia was charged with in the present case. (See *People v. Ewoldt* (1994) 7 Cal.4th 380, 405.) And, the jurors were expressly admonished not to consider the prior conviction to prove Valdivia was a bad person or criminally disposed. For all these reasons, we find the prior conviction was not unduly prejudicial, and the court did not error in telling the jury about it. No error has been shown.

II

Valdivia also argues his convictions for possessing heroin and possessing methamphetamine for sale should be overturned because there is insufficient evidence he had dominion and control over those drugs. Again, we disagree.

"In determining whether there is sufficient evidence to support a criminal conviction, we must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence — that is evidence which is reasonable, credible and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

Valdivia contends there is insufficient evidence connecting him to the drugs that were found in the car he had been driving. He's right in arguing that his mere presence in the vehicle is insufficient to support his convictions. (*People v. Jenkins* (1979) 91 Cal.App.3d 579, 584.) But that does not prevent us from considering the circumstances surrounding his presence in the vehicle. Indeed, possession "may be established by circumstantial evidence and any reasonable inferences drawn from such evidence. [Citation.]" (*People v. Eckstrom* (1986) 187 Cal.App.3d 323, 331.) And it may be "imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another. [Citation.]" (*People v. Newman* (1971) 5 Cal.3d 48, 52.)

Valdivia wasn't just driving a vehicle that contained drugs; the drugs were located in plain view by his door and the center console, within his easy reach. And upon seeing the police, he immediately pulled over to the curb and tried to distance himself from the vehicle, thus demonstrating a consciousness of guilt. He also lied to the police about not being in the car and was found to be carrying two cell phones and a wad of twenties. The lying speaks for itself, and as Officer Gutierrez explained in his testimony, the phones and cash are trademarks of street-level drug dealer. The fact Valdivia was not under the influence and had none of the paraphernalia of a user bolsters this conclusion. Considering all of the evidence that was presented in this case, a reasonable jury could find Valdivia was in possession of the controlled substances with the intent to sell them. Therefore, we reject his challenge to the sufficiency of the evidence.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.